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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1996

Addendum

SPAIN*

[... November 1996]

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* For the initial report submitted by the Government of Spain, see document CAT/C/5/Add.21; for its consideration by the Committee, see documents CAT/C/SR.59 and 60 and Official Records of the General Assembly, Forty-sixth session, Supplement No. 46 (A/46/46) (paras. 57-86). For the second periodic report, see document CAT/C/17/Add.10; for its consideration by the Committee, see documents CAT/C/SR.145, 146 and 146/Add.2 and Official Records of the General Assembly, Forty-eighth session, Supplement No. 44 (A/48/44) (paras. 430-458).

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I. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Introduction

1. The Government of the Kingdom of Spain has the honour to submit its third periodic report on the implementation of the Convention and, in accordance with the customary rule of cooperation, is doing so within the established deadline.

2. The submission of a third report implies a certain experience in the relationship between the Committee and the State party. In the light of that experience, the Spanish Government wishes to place on record its satisfaction with the effectiveness of the system created by the Convention.

3. The periodic drafting of a specific report on the implementation of the Convention is not an added administrative burden but a welcome occasion for the State to take stock of the domestic situation regarding the prohibition of torture, a matter of the greatest importance for the protection and safeguarding of fundamental rights.

4. The Committee's consideration of reports takes the form of a dialogue, and the benefit to be derived by the State in terms of perfecting the safeguards of prevention and protection is undeniable. For that reason, in keeping with the spirit of the Convention, the Spanish Government reiterates its satisfaction with the functioning of the system and advocates its maintenance. It is an honour and most useful to continue to work with the Committee.

5. The principal new developments since the submission of the second periodic report may be summarized here as follows:

6. First, the scope of the definition of torture contained in article 1 of the Convention is now reflected in the Penal Code currently in force. The Committee is to be thanked for its cooperation and comments in this regard, which have made it possible to improve the characterization of this offence in the criminal law.

7. Second, Spanish society is showing an ever greater sensitivity to torture and ill-treatment, which are especially repugnant acts. This increased sensitivity and rejection is manifested in several ways:

Cases of ill-treatment, now isolated, are condemned and highlighted by the media because they make news;

The public's feeling of repulsion at such attacks on human dignity and integrity has increased and the concept of ill-treatment is being extended in society from its more common application in the sense of floggings and/or beatings to subtler areas, encompassing practices or circumstances that in the past could not conceivably have been defined as ill-treatment;

Now that, except for isolated cases, "gross" forms of torture have virtually been eradicated, people are coming to demand protection in new areas, denouncing as ill-treatment or torture acts that were not previously so described.

Specific examples will be provided below.

8. Third, the risk of torture and ill-treatment was traditionally seen as a problem in the context of anti-terrorist measures. The focus has now shifted, however, and while this risk in the fight against terrorism cannot be disregarded, attention is being given to the actions of private security forces, the municipal police, etc., where the victims are persons suspected of ordinary offences. These are isolated cases, but they do illustrate this shift of focus, which has been detected, for example, by the Ombudsman (Defensor del Pueblo) in his latest report covering the year 1995.

Article 1

9. The new Penal Code approved by Organization Act No. 10/1995, of 23 November 1995, has been in force since 25 May 1996. The relevant provisions are to be found in the following articles of Book I, Title VII "Concerning torture and other offences against moral integrity".

Article 173

"Anyone who inflicts degrading treatment upon another person, seriously impairing his moral integrity, shall be liable to imprisonment for six months to two years."

Article 174

"1. A public authority or official commits torture if, by abuse of his office and for the purpose of obtaining a confession or information from any person or of punishing him for any act he has committed or is suspected of having committed, he subjects that person to conditions or procedures which by their nature, duration or other circumstances cause him physical or mental suffering, entail the suppression or diminution of his faculties of conscience, discernment or decision-making, or in any other way infringe his moral integrity. The person guilty of torture shall be liable to a term of two to six years' imprisonment if the infringement was a serious one, and a term of one to three years' imprisonment if it was not. In addition to the penalties mentioned, the penalty of general disqualification for 8 to 12 years shall be imposed in all cases.

2. The same penalties shall be incurred, respectively, by authorities or staff of prisons or centres for the protection or correction of minors who commit any of the acts referred to in the above paragraph against detainees, inmates or prisoners."

Article 175

"Any public authority or official who, by abuse of his office in cases other than those included in the previous article, infringes an individual's moral integrity shall be liable to a term of two to four years' imprisonment if the infringement was a serious one, and a term of six months to two years' imprisonment if it was not. In addition to the penalties mentioned, the perpetrator shall in any case be liable to specific disqualification from public employment or office for a period of two to four years."

Article 176

"The penalties established in the preceding articles shall be imposed on any authority or official who fails in the duties of his post and allows other persons to perform the acts described therein."

Article 177

"If, in addition to the infringement of moral integrity, the offences described in the preceding articles result in injury or harm to the life, physical integrity, health, sexual liberty or property of the victim or of a third party, those acts shall be punished separately with the penalties attached to them for the offences or misdemeanours committed, except when the former is already specifically punished by law."

10. A comparison of former article 204 bis and present articles 174 to 177 of the new Penal Code shows that:

(i) The term "torture" is used exclusively with reference to a "public authority or official";

(ii) The scope of the offence extends not only to the purpose of obtaining a confession or information, but also to that of punishment;

(iii) The description of the offence has been made more precise, covering both "gross" forms of torture and "scientific" psychological practices;

(iv) The penalty of disqualification has been revised, and instead of being specific it becomes general. (With a specific disqualification it was possible for the torturer to remain a public official, in a part of the administration different from the one to which he belonged when the offence was committed. A general disqualification precludes the exercise of any public function or office.);

(v) The duration of the custodial penalty is independent from that of the disqualification. In addition to becoming general, the disqualification will last for a period of 8 to 12 years;

(vi) The penalty for torture is increased. From brief imprisonment (for one month and a day to six months) it is raised to a term of two to six years' imprisonment if the infringement was a serious one, and one to three years' imprisonment if it was not.

11. To sum up, the offence of torture has been characterized in a wording similar to that of the Convention and there has been a significant and large increase in the penalties to be imposed.

12. Thanks to the Committee, torture is now properly defined and penalized appropriately as a serious offence. (It may be noted that article 33 of the current Penal Code, in its classification of heavy, less heavy and light penalties, lists "imprisonment for more than three years" as a heavy penalty.) Lastly, without forgetting or ignoring the value of educative work for the prevention of torture, the importance of a serious and tough penalty has to be stressed. The strengthening of the prohibition of torture in the new Penal Code is incontestable, and its greater effectiveness will be demonstrated in practice.

13. The legislation applied during the period covered by this report was the previous legislation. However, consideration of the Convention against Torture as part of the Spanish legal system, in accordance with article 97 of the Constitution, and the constant application of article 10, paragraph 2 of the Constitution, which calls for matters relating to fundamental rights to be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain, have enabled cases of torture to be properly punished.

14. This can be seen, for example, in the Supreme Court judgement of 30 November 1995. A convicted person lodged an appeal based on the limitation of torture to the purpose of obtaining a confession or testimony. After citing the definition of torture given by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in September 1975, and that contained in the Convention against Torture, and invoking articles 10, paragraph 2, and 96, paragraph 2, of the Constitution, the Supreme Court, having due regard for the principle of legality and the accusatory principle, upheld the conviction on the basis of article 204 (bis), paragraph 4, of the Penal Code, which was then in force. (This judgement is clearly indicative of the trend already described. The case involved a municipal police officer who had exerted pressure on the father of a young woman when her boyfriend's mother had reported the likelihood of an abortion. Using coercive means, the police officer had sought to have the young woman undergo a medical examination so as to obtain evidence of an abortion. This case is far removed both from the fight against terrorism and from "gross" forms of torture.)

15. Another example is the Supreme Court judgement of 22 September 1995. In addition to quoting verbatim from the Convention against Torture and its article 1, as well as from other international instruments, the Court recalled in its judgement that "paragraph 2 of article 204 bis was laid down by Organization Act No. 3/1989, of 21 June 1989, since a better definition of a criminal act totally incompatible with the democratic spirit was called for both by the Constitution and the courts".

Article 2

16. With regard to preventive measures, mention should be made of the treaty-based activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe.

17. In 1993, during its consideration of the second periodic report, the Committee observed that Spain had not yet authorized the publication of the CPT's report on its 1991 visit. It is gratifying to be able to state that Spain has authorized the publication of the reports concerning all the CPT's visits, of which there have been three to date (April 1991, April 1994 and June 1994). Since 5 April 1995 these reports, as well as the Government's replies, have been entirely public.

18. The earlier position of confidentiality was frankly prejudicial for Spain, since it could have been taken to mean that there were facts or information that needed to be concealed, whereas that was not only not true but, what is more, placed Spain in an awkward position with respect to other States. At the same time, keeping the reports confidential hindered full implementation of the CPT's recommendations and suggestions, all of which were aimed at preventing torture.

19. A reading of the reports of the CPT's visits to other States shows that the situation in Spain in no way differs from that obtaining in those other States. The same may be said about the legal safeguards for prison inmates, the medical treatment they receive and other matters in which Spain occupies a leading place in terms of prevention and the protection of human rights.

20. The extent of implementation by the Spanish authorities of the recommendations set out by the CPT in its reports on Spain may be described as very satisfactory. In addition to the budgetary effort made to improve the physical conditions in detention centres and prisons, illustrations of which are to be found in the annexes, there are other very tangible results to be noted.

21. Thus, for example, transfers of detainees used to give rise to complaints of ill-treatment; for that reason the physical means of transfer have been considerably improved and the penitentiary institutions have issued a circular on the transfer of prisoners, which provides good safeguards and whose application to persons in detention is being studied.

22. Different detention registers used to be kept by the various State security forces and bodies. These registers have been unified and safeguards provided to cover all eventualities to the maximum extent.

23. With regard to medical examinations for detainees, in addition to the improvement of the requisite facilities, the preparation of a set of rules for the examination of detainees is well advanced.

24. Legislative measures in the field of prevention include the following.

25. Informing all detainees of their rights, a safeguard prescribed in article 520 of the Criminal Procedure Act, is a very effective means of preventing ill-treatment. However, if such information is not provided immediately, or is presented in an incomplete or biased way, it ceases to have the required effect. To make absolutely sure that this safeguard is applied and observed properly, the new Penal Code already in force has introduced the following offence in its article 537:

> "Any public authority or official who prevents or obstructs the exercise of the right to counsel of a detainee or prisoner, solicits or encourages the latter's waiver of such counsel or does not inform him immediately, in a manner comprehensible to him, of his rights and the reasons for his detention, shall be liable to the penalty of a four- to ten-month fine and specific disqualification from public employment or office for two to four years."

26. Protection of the right to liberty is clearly reinforced in articles 530 to 533 and in article 534, paragraph 2, of the new Penal Code as follows:

> Article 530
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> "Any public authority or official who, in connection with criminal proceedings, permits, effects or prolongs any deprivation of liberty of a detainee, prisoner or sentenced person, in violation of the constitutional or statutory time limits or other safeguards, shall be liable to the penalty of specific disqualification from public employment or office for a period of four to eight years."
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> Article 531
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> "Any public authority or official who, in connection with criminal proceedings, orders, effects or prolongs the holding of a detainee, prisoner or sentenced person incommunicado, in violation of the constitutional or statutory time limits or other safeguards, shall be liable to the penalty of specific disqualification from public employment or office for a period of two to six years."
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> Article 532
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> "If the acts described in the two preceding articles were committed as a result of grave negligence, they shall be punishable by suspension from public employment or office for a period of six months to two years."
>
> Article 533
>
> "Any official of a prison or centre for the protection or correction of minors who imposes undue sanctions or restrictions upon prisoners or inmates or treats them with needless severity shall be liable to the penalty of specific disqualification from public employment or office for a period of two to six years."

Article 534, paragraph 2

"Any public authority or official who, during the lawful inspection of an individual's papers, documents or effects, commits any unjust harassment or causes needless damage to his property shall be liable to the penalties provided for such acts in the upper half of the category, and also to the penalty of specific disqualification from public employment or office for a period of two to six years."

27. To provide for criminal punishment serving as a deterrent, Title XXI, Chapter V, of Book II, "Concerning offences committed by public officials against the rights of the individual" (which contains the article cited above), ends with the following article 542:

"Any public authority or official who knowingly prevents a person from exercising other civil rights recognized by the Constitution and the laws shall be liable to the penalty of specific disqualification from public employment or office for a period of one to four years."

28. The above provisions criminalize acts by public servants which affect the individual rights of citizens and are not consistent with the purpose of protecting fundamental rights or with the manner in which those rights are to be protected. Treating such acts as criminal offences is undeniably an effective means of prevention. The fact that these offences have been precisely defined in the new Penal Code, published in 1995 and now in force, represents yet another step in the constant effort to protect fundamental rights.

29. First of all, democracy was restored, and the Constitution proclaimed and guaranteed the effective enjoyment of human rights. All public servants, and especially the security bodies and forces, are trained and educated to respect human rights, and the public is also increasingly sensitized to reject any form of ill-treatment and to demand safeguards. In the next step, once an adequate level of civic education and training is achieved, the criminal provisions are strengthened and defined more precisely to preclude, as far as humanly possible, any behaviour at variance with the protection of human rights.

30. Article 504 bis of the Criminal Procedure Act, introduced in 1988, permitted the suspension of bail granted by a judge, for a maximum of one month, if an appeal was lodged by the public prosecutor in cases involving armed gangs. Its purpose was to ensure that any reversal of the judge's decision to grant bail, which was not definitive, could be given effect.

31. The Constitutional Court, in its judgement No. 71/1994 of 3 March 1994, declared this article unconstitutional and void inasmuch as it infringed the fundamental right to freedom of the person recognized in article 17 of the Spanish Constitution. The removal of this statutory provision from the legal system is a preventive measure, since it avoids a situation in which a person whose release has been granted by a judge might continue to be deprived of liberty because the public prosecutor has appealed against the judge's

decision. Thus, in an illustration of its role as the ultimate guarantor of fundamental rights, the Constitutional Court precluded any deprivation of liberty contrary to that basic right.

32. Among the judicial measures taken with a view to preventing any risk of ill-treatment, we may note the following:

(a) Constitutional Court judgement of 11 March 1995. A prisoner filed an amparo (enforcement of rights) appeal before the Constitutional Court, pleading that the courts had not protected his right to physical integrity. According to the prisoner, the fact of his having been exposed to X-rays during a body search as a security measure constituted degrading treatment. The Constitutional Court first considered the means utilized and noted that, according to the medical report, suitable X-ray equipment had been used, in an isolated and sporadic manner, and the amount of radiation employed had been lower than the maximum level permitted by the World Health Organization. The Court then examined the justification for the prison security measures in this particular case, and also the prisoner's record, which revealed him to be very dangerous, with a history of attempting to commit assault and to escape, of causing damage and of possessing prohibited objects (including a saw). The Court therefore concluded that the measure had been necessary to ensure order and safety.

(b) Constitutional Court judgement of 28 February 1994. After a private meeting with a visitor, a prisoner was obliged to undress and bend over as a security measure to prevent the introduction of prohibited articles (drugs, etc.). The prisoner filed an amparo appeal, claiming degrading treatment because of the application of the order, which was not obeyed and sanctioned in an adversary proceeding, in accordance with the prison legislation. The prisoner instituting the amparo proceeding complained that the examination had not been performed using X-rays. (It is interesting to note that when the application of a prison security measure involves a full strip it gives rise to a complaint of ill-treatment, and when performed using X-ray apparatus there is a complaint of infringement of physical integrity.) In the present case, the Court did not find that the treatment which involved stripping and bending over was of the degree of intensity necessary to be considered degrading, and cited to that effect the Convention against Torture and the case law of the European Court of Human Rights. However, the Court did find that the order to strip and bend over, following a private meeting with someone from outside the prison, constituted an invasion of the appellant's privacy, since the prison order was not sufficiently justified in the case in question.

33. Both judgements indicate the rules to be followed by the prison authorities when carrying out inspections for security reasons.

34. These two judgements relating to amparo proceedings brought by prisoners constitute, together with another judgement to be discussed later, the three cases which have been dealt with by the Constitutional Court concerning alleged violations of article 15 of the Constitution (prohibition of torture).

35. If amparo appeals by prisoners to the Constitutional Court involve complaints about the use of X-rays or orders to strip, the implication is clear and confirms the trend already described in the introduction.

36. Complaints regarding gross forms of torture or ill-treatment have practically disappeared, a clear sign that such practices are not taking place, except in very isolated cases. When prisoners complain not about beatings, insults, coercion, etc., but about X-rays or stripping, it means that there are no beatings, insults, coercion, etc. Moreover, with the disappearance of gross forms of torture, the trend now is towards addressing specific issues and lodging complaints that could not conceivably have been made before the entry into force of the Constitution.

37. This is the present situation in Spain, where torture and ill-treatment in their traditional sense have been practically eradicated and where guarantees and protection against acts and conduct that might violate article 15 of the Constitution are constantly being improved.

38. In considering this article further, the Committee's attention should be drawn to the Constitutional Court's judgement of 14 July 1994. This arose from a motion of unconstitutionality introduced by a judge to determine whether or not article 428 of the Penal Code was in conformity with article 15 of the Constitution. Article 428, introduced by Organization Act No. 3/1989 of 21 June 1989, decriminalized the sterilization of persons incapacitated owing to serious mental deficiencies, subject to the approval of the judicial authority following appropriate medical tests, upon application by the legal representative and after a hearing of the views of the government attorney and a judicial examination of the incapacitated person.

39. The Constitutional Court decided in plenary session that, given the nature of the facts at issue, and considering all the safeguards established therein, this article did not violate article 15 of the Constitution. The judgement was the subject of five dissenting votes, those casting them firmly opposing such decriminalization and calling for greater precautions in the legal regulations.

40. Present article 156 of the Penal Code now in force replaces the above-mentioned article 428. The new text improves considerably on the earlier one, taking into account the cautionary views of the Constitutional Court. Former article 428 had not mentioned the object of sterilization, which, the critics argued could be requested by the incapacitated person's guardians for reasons of pure self-interest or convenience, etc. The new text stipulates, as a guiding principle, that sterilization must serve "the best interests of the incapacitated person".

41. The issue is, of course, controversial - as amply illustrated by the votes dissenting from the judgement. In any event, whatever position each individual may take on the matter, for the purposes of this report it is important to note the legal requirements, the concern of the Constitutional Court to provide guarantees and the ready acknowledgement of its concern by the legislature, as a result of which the decriminalization of the sterilization of people suffering from deficiencies has been made subject to the greatest possible safeguards.

42. Lastly, the Committee is informed that the Kingdom of Spain has completely abolished the death penalty. The Constitution had already confined its application exclusively to military law in time of war and Organization Act No. 11/1995 of 27 November 1995 has now also abolished the death penalty in wartime.

43. Following this total abolition of the death penalty, internal procedural arrangements are being completed to render void the reservation formulated by Spain upon ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights concerning the right to apply the death penalty in the exceptional and highly serious cases provided for by military criminal law.

44. Capital punishment, the utmost attack on the integrity of the human person, has been completely abolished in Spain. Consequently, there is no longer any circumstance, however exceptional, that would make it possible to apply that odious penalty.

Article 3

45. The Committee is informed of the publication of new Act No. 9/1994, of 19 May 1994, which amends Act No. 5/1984 of 26 March 1984 governing the right of asylum and refugee status.

46. For the purposes of the Convention, reference should be made to the legal requirement of a hearing, prior to any determination, of the representative of the Office of the United Nations High Commissioner for Refugees, and the requirement to give the reasons for any decision to reject an application.

47. The Spanish regulations on this matter are well known to the Committee since it had to deal with communication No. 23/1995, brought against Spain by the Spanish Refugee Aid Commission on behalf of Bekhaled Goreini. The Committee, by its decision of 15 November 1995, declared the communication inadmissible, concluding that "the communication on behalf of X has not been sufficiently justified as regards the claimed violation of article 3 of the Convention but is rather a matter of political asylum, making the communication incompatible with article 22 of the Convention".

Article 4

48. Torture and ill-treatment constitute an offence under articles 174 to 177 of the Penal Code.

49. Any authority or official who fails in the duties of his post and allows other persons to perform acts defined as torture will incur the same penalties as the direct perpetrators (art. 176 of the Penal Code).

50. (The Supreme Court judgement of 13 December 1993 upheld a sentence against the superiors of the direct perpetrators, "since they knew about the abuses and did not put a stop to them".)

51. The new classification of torture sets a heavy penalty of up to 6 years' imprisonment, as well as general disqualification for between 8 and 12 years, for that offence. (See the information relating to article 1.)

Articles 5, 6, 7, 8 and 9

52. No new developments.

Article 10

53. Education regarding human rights, and especially the prohibition of torture, forms part of the training of all officials who might commit this offence, and such instruction is thus given in all centres providing initial, advanced or refresher courses for the security forces and bodies. Lectures are regularly given at such centres by national specialists or expert members of international organizations setting out international case law on this question.

54. Judges and magistrates for their part are informed about the relevant domestic and international case law in the training courses organized by the General Council of Justice.

55. The courts' judgements refer to the prohibition of torture and to the fact that torture is not only an offence but an odious practice in a democratic society. One example is the Supreme Court judgement of 1 February 1994:

> "There can be no doubt that the State must fight, and is indeed fighting, to stop or reduce crime, especially so-called organized crime, including terrorism, drug trafficking, the corruption of minors, etc. However its action is legitimate only when this fight is waged solely and exclusively using the means that the legal system puts at its disposal. There is nothing more paradoxical and grave than fighting crime - any crime - outside the strict confines of the law."

Article 11

56. It may be noted that a single detention register has been established for all State security forces and bodies, containing all the references needed to check on what is happening at any time, and to identify the official responsible for the detainee; there are also detailed rules concerning the transfer of prisoners, which guarantee exhaustive monitoring of such procedures.

Articles 12 and 13

57. This report has set out various judgements of the Supreme Court and the Constitutional Court concerning torture. As the courts sometimes find, torture is an offence that presents special characteristics where clarifying the facts is concerned.

> "The presence merely of the person who has tortured - we are now speaking theoretically - and of the person tortured, makes all the more

> difficult, if that is possible, the highly complex task of setting out the facts proven in a criminal case, because in general there are two opposing statements that contradict one another, completely and absolutely. It is obvious, however, that everything which contributes to ascertaining the truth must be made available to serve the essential purpose of the criminal proceedings, namely to determine what actually happened, although always with reference to the parameters which the system of safeguards establishes, that is to say, not at any price or at the expense of any other basic right."
>
> "[Therefore] it has to be stressed that these offences can rarely be proven by means of the direct evidence for the prosecution, and one generally has to turn to such circumstantial evidence as the Constitutional Court recognizes." (Supreme Court judgement of 1 February 1994)

58. In this judgement the Court, addressing the convicted persons' contention that the ill-treatment inflicted should be considered as a continuing offence (which would have entailed a significantly lighter sentence), responded cogently:

> "The term 'continuing offence' is not applicable when the victim has rights whose violation cannot be consolidated in a single offence by treating the criminal acts in question as connected and continuous, since values such as life, integrity, etc., are not susceptible of gradual infringement. Each action, inasmuch as it may be described as a physical act, constitutes an offence, and not just a stage in that offence. Therefore, when an interrogation - whether formal or informal - ended, an offence of torture occurred, and did so as many times as the acts referred to in the judgement were committed."

59. The three judgements concerning torture rendered by the Constitutional Court during the period covered by this report are to be found in the annexes, together with the five judgements of the Supreme Court.

60. Given the particular gravity of the facts at issue, mention should be made of the judgements of 13 December 1993 and 1 February 1994, which reviewed cases dating from 1981 and 1983, respectively. Both judgements refer, in negative terms, to the excessive length of those proceedings. At the same time, the Supreme Court judgement of 1993 states that "the demonstrable zeal and commitment of the judge in charge of the preliminary examination, who despite all kinds of obstacles and obstructionist tactics managed to carry out her task successfully, deserves to be emphasized, as does the impartial intervention of the Government Attorney's Office". The Supreme Court thus confirmed the sentences.

Article 14

61. No problem with the implementation of this article.

62. Mention should, however, be made of the response by the Supreme Court, in its judgement of 13 December 1993, to the State's contention that it did not bear secondary liability because the convicted persons had disobeyed

orders. The highest court did not allow this claim, since the State does bear secondary civil liability and cannot be exempted therefrom as such liability arises whenever the laws and regulations and basic principles of conduct are violated by professional conduct.

63. The right of a victim of torture to obtain redress and adequate compensation is, therefore, absolutely guaranteed in the Spanish legal system. In the event of the victim's death, this right passes to his heirs.

Article 15

64. First of all, as the Constitutional Court has stated (for example, in its judgement of 15 April 1991), "the only evidence that may be considered authentic and binding on the organs of criminal justice when passing judgement is that submitted in the oral proceedings".

65. This principle is, of course, observed by all the courts, as illustrated by the attached judgement of the National High Court, dated 30 October 1993, in the Barberá et al. case. (This case went before the European Court of Human Rights, which found no violation of the right to the presumption of innocence but concluded that there had been a violation of article 6, paragraph 1, of the European Convention on Human Rights considering the proceedings as a whole.) Since that judgement, it has been necessary for full evidence to be submitted in the oral proceedings, and a judicial step such as "documentary evidence to be taken as reproduced" is considered to be "a routine step devoid of value". The Constitutional Court declared the trial null and void and ordered a re-trial, in a judgement that was certainly innovative in the European legal context. In view of the evidence that it was possible to submit, the new hearing led to an acquittal owing to the "unproven" nature of the charges.

66. Secondly, evidence must be gathered with strict respect for basic rights and legal requirements. For example, detainees' statements to the police or the Civil Guard have to be taken with a lawyer present. Likewise, judicial acts require the presence of the clerk of the court, who is responsible for the authenticity of public documents. Also, for example, in order for identification parades to have value as evidence that can be used in the oral proceedings they must be held on judicial premises and in compliance with all the formalities required by the procedural rules governing them. As regards the presumption of innocence, judgements reflecting its observance in Spanish law are attached.

67. Thirdly, evidence gathered as part of police or pre-trial proceedings in compliance with the legal formalities can have probative value "provided that it is reproduced in the oral proceedings under conditions enabling the defence counsel of the accused to challenge it". This adversary system makes it possible to guarantee the rights of the defence and to evaluate the evidence in the oral proceedings, since the evidence is reproduced before the court with the clear possibility of being challenged.

68. Attached is a file containing rulings of the Constitutional Court on evidence in criminal proceedings.

Article 16

69. No new developments in this respect.

Judicial proceedings concerning torture

70. According to the data supplied by the State Attorney-General's Office, judicial proceedings on grounds of torture were brought in 11 cases in 1993, 18 in 1994, 29 in 1995 and 11 in 1996, i.e. 69 cases in those last four years.

71. In the periodic report covering the years 1988-1992, proceedings concerning torture had been brought in 84 cases.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

72. The information requested by the Committee was conveyed to it in the days immediately following the presentation of the initial report.

List of annexes*

1. Penal Code of 23 November 1995 (comparative study with the repealed 1973 Penal Code).

2. Case law of the Supreme Court and the Constitutional Court relating to torture.

3. Publications on the prison system in Spain (Spanish and English) and documents relating to several of the new penitentiaries, illustrating the budgetary effort directed at the constant improvement of prisons.

4. Circular No. 23/1994 issued by the penitentiary institutions concerning rules for supervision of the transfer of prisoners.

5. Interior Ministry instructions on detention registers.

6. Judgement No. 71/1994 of the Constitutional Court declaring article 504 bis of the Criminal Procedure Act to be unconstitutional.

7. Organization Act No. 11/1995 of 27 November 1995 on the total abolition of the death penalty.

8. Act No. 9/1994 of 19 May 1994, which amends former Act No. 5/1984, governing the rignt of asylum and refugee status.

9. National High Court judgement of 30 October 1993 in the Barberá case.

10. Case law of the Constitutional Court relating to evidence in criminal proceedings.

11. Reports of the Attorney-General and various prosecutors on trials concerning torture.

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* The annexes are available for consultation in the files of the Office of the United Nations High Commissioner/Centre for Human Rights.